

82-5376

SUPREME COURT
of the
UNITED STATES

ALBERT LATENDRESSE
Plaintiff-Appellee,

v.

ORVILLE LATENDRESSE aka
ORVILLE J. LATENDRESSE and
RUTH LATENDRESSE
Defendants-Appellants.

JURISDICTIONAL STATEMENT
of the
APPELLANTS

A-1126
(ND) 10135

RECEIVED

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SUPREME COURT, U.S.

APPEAL OF PART OF ORDER

FROM

THE SUPREME COURT

STATE OF NORTH DAKOTA

ORVILLE J. LATENDRESSE
Box 166
Upham, North Dakota, 58789
For the Defendants-Appellants
Pro se

~~MICHAEL S. McIntee
Box 70
207 Main Street South
Towner, North Dakota, 58788
For the Plaintiff-Appellee~~

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STATUTES

N.D. CENTURY CODE 27-01-07-----	1,2,3,4
Fed. Rules of Civil Procedure 75(m), 28 U.S.C.A.; 28 U.S.C.A. §1915-----	1,2
North Dakota Rules of Civil Procedure #36-----	3

CASE REFERENCES

JIRKINS v. E. I. DU PONT DE NEMOURS & CO., Inc.-----	1,2
69 S. Ct. 85	

OTHER

§ 1, Article 14, U. S. Constitutional Amendments -----	1,2
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QUESTIONS PRESENTED BY THIS APPEAL

The Appellants urge the following issues for review before the United States Supreme Court.

1. When the North Dakota Legislators wrote in the North Dakota Century Code 27-01-07 "CIVIL ACTION FEES -- WAIVER. Any filing fees connected with any civil action....."

did they intend to restrict the waiver to one cost or "a filing fee" as interpreted and allowed by the North Dakota Supreme Court(Order being appealed from and previously included with Appellants' June 22, 1982 PETITION FOR EXTENSION ON DOCKETING APPEAL) or did they mean all costs ("CIVIL ACTION FEES--WAIVER. Any filing fees.") ?

2. Were the Appellants' rights under § 1 Article 14 of th^e amendments to the United States Constitution abridged or denied by the North Dakota Supreme Court's interpretation?

3. If the North Dakota Statute is of such vague construction and there are no attached case references to it's latest(1979) supplement, shouldn't guidance and direction be taken from Federal Rules of Civil Procedure, rule 75 (n), 28 U.S.C.A.; 28 U.S.C.A. § 1915, and *ALMINS v. E.I. DU PONT DE NEMOURS & CO. Inc.* 69 S. Ct.85 wherein:

"...Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security thereof, by a person who makes affidavit that he is unable to pay such costs or to give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress."

1. GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

2. The Appellants, Orville and Ruth Latendresse were denied a Motion
3. for a New Trial in the District Court, Northeast Judicial District of
4. North Dakota, the Honorable William A. Neumann, Judge, presiding. They
5. appealed to the Supreme Court of North Dakota and a Motion For Leave
6. To Proceed In Forma Pauperis with Affidavit Of Poverty. Judge Neu-
7. mann forwarded the Motion For Appeal but waived jurisdiction on their
8. In Forma Pauperis Motion. The Appellants thereupon appealed to the
9. North Dakota Supreme Court on their In Forma Pauperis Motion and
10. supporting Affidavit. The Supreme Court of North Dakota ruled on
11. April 5, 1982(see ORDER sent with June 22, 1982 PETITION FOR RE-
12. VENSION ON DOCKETING APPEAL et al). We quote the pertinent paragraphs:
13. "...The motion to proceed in Forma Pauperis was accompanied
14. by a sworn affidavit of indigency as required by Section 27-01
15. -07, N.D.C.C. This Court having considered that request, HERE-
16. BY ORDERS that Orville and Ruth Latendresse be permitted to
17. proceed in Forma Pauperis in the above-titled action exempting
18. them from paying a filing fee but not exempting them from pay-
19. ing costs of transcript, attorney's fees, any other fees or costs,
20. or from providing security therefor."

21. The Appellants feel they are being denied their In Forma Pauperis
22. rights to their fullest statutory privilege intended under NDCC 27-01
23. -07 which waives any civil action fees, any filing fees as follows:
24. "NDCC 27-01-07. Civil action fees-- Waiver. Any filing fees
25. connected with any civil action to be heard in any of the courts
26. of the judicial system as listed in section 27-01-01 may be
27. waived with or without a hearing, at the court's discretion,
28. by the filing of an in forma pauperis petition accompanied by
29. a sworn affidavit of the petitioner relating the pertinent
30. information regarding indigency..".
31. Had the legislature intend only the one cost of a filing or docket-
32. ing fee, NDCC 27-01-07 would have read like this:
33. " 27-01-07. Civil action fee -- Waiver. Any filing fee..."
34. An indigent litigant not helped much financially with just the filing
35. or docketing fee and burdened with all the other costs, fees and security.

36. The appellants feel their rights under § 1, Article 14 of the Amend-
37. ments to the United States Constitution wherein it states in part:
38. " No state shall make or enforce any law which shall abridge
39. the privileges or immunities of citizens of the United States,
40. nor shall any state deprive any person of life, liberty or
41. property, without due process of law, nor deny to any person
42. within its jurisdiction the equal protection of the laws."

43. were denied or abridged invoking jurisdiction of this Court.
44. This / interpreted more clearly the In Forma Pauperis rule Of the
45. Federal Rules of Civil Procedure 75 (a), 28 U.S.C.A.; 28 U.S.C.A. §
46. 1915 and their favorable application in ADKINS v. E. I. DU PONT DE NE-
47. MOURS & CO. Inc., 369 S.Ct. 85 to wit:

48. "... Any Court of the United States may authorize the commencement,
49. prosecution or defense of any suit, action or proceeding, civil or
50. criminal, or appeal therein, without prepayment of fees and costs
or security thereof, by a person who makes affidavit that he is
unable to pay such costs or to give security therefor. Such affi-
davit shall state the nature of the action, defense or appeal and
affiant's belief that he is entitled to redress. "

STATEMENT OF THE CASE

This action started on an action by Albert Latendresse to collect on a note for \$4000.00 from Orville and Ruth Latendresse. The Defendants were served with the Summons and Complaint on June 13, 1978.

The Defendant, Orville Latendresse, answered for the Defendants on July 3, 1978 and counterclaimed on a 1950 note, for payment for wintering cattle(Plaintiff's), and for damages from a fire caused by Plaintiff's negligence.

Plaintiff replied to the counterclaim on July 19, 1978. On August 2, 1978 Plaintiff served a Request For Admissions on the Defendants.

On September 29, 1978, Plaintiff moved for Summary Judgment on the ground that " Defendants have failed to Answer a Request for Admission in accordance with Rule 36 of the North Dakota Rules of Civil Procedure and thereby, have admitted all the material allegations of the Complaint.

" Further, that the allegations of the counterclaim not otherwise explained, do not constitute a claim upon which relief can be granted."

A hearing on this motion was held on October 11, 1978. The day before this hearing Orville Latendresse served on Michael McIntee, Plaintiff's Attorney, his Answers to Plaintiff's Request for Admissions, with a cover letter why his lateness of the answers should be excused.

The Motion For Summary Judgment was heard by Honorable Clifford Justonius, Supreme Court Commissioner, who, after taking it under advisement, issued a memorandum opinion on October 26, 1978 and an order for Judgment entry on November 15, 1978, granting Plaintiff's Motion for Summary Judgment. Notice of Appeal was filed on November 27, 1978. Defendants had received Notice of Entry of Judgment on November 24, 1978.

After hearing oral arguments on this appeal the North Dakota Supreme Court Entered Judgment on June 20, 1980 wherein " THE SUMMARY JUDGMENT IS REVERSED and the case REMANDED for further trial.

Remand trial was held on March 26, 1981 in District Court, Northeast Judicial District before the Honorable William A Neumann, Judge, presiding. Judgment was entered "... in favor of the Plaintiff against the Defendants in the sum of \$7,651.77 in the office of the Clerk of District Court in and for McHenry County, North Dakota on the 3rd day of April, 1981."

The Defendants' Hearing on Motion for New trial was held on August 31, 1981 in Judge Neumann's District Court wherein MOTION FOR NEW TRIAL was ORDERED DENIED.

Motion for EXTENSION OF TIME TO FILE NOTICE OF APPEAL was filed in District Court and approved on November 3, 1981. Notice of Appeal to the Supreme Court of North Dakota from an ORDER OF DENIAL was filed in District Court on December 4, 1981. A PETITION FOR EXTENSION TO FILE TRANSCRIPTS, MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS was filed with the Clerk of the District Court on January 13, 1982. Judge Neumann approved the Extension of time to file transcripts but waived jurisdiction on the IN FORMA PAUPERIS MOTION, on March 16, 1982.

1. On April 5, 1982 the Defendants-Appellants filed with the North Dakota
2. Supreme Court Clerk MOTION FOR FURTHER EXTENSION OF TIME IN WHICH TO FILE
3. TRANSCRIPT, MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and AFFIDAVIT
4. IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS. On April 5,
5. 1982 the North Dakota Supreme Court filed an ORDER Denying EXTENSIO TO
6. FILE TRANSCRIPT but "permitting Orville and Ruth Latendresse to proceed
7. in Forma Pauperis in the above entitled action exempting them from pay-
8. ing a filing fee (underlining supplied by the appellants) but not exempt-
9. them from paying costs of transcript, attorney's fees, any other fees or
10. costs , or from providing security therefor." See ND S. Ct. Order previous-
11. ly filed in this Appeal. MOTION FOR STAY OF PROCEEDINGS and EXTENSION
12. OF TIME TO FILE BRIEFS(in the ND Supreme Court) was filed with the North
13. Dakota Supreme Court Clerk on June 15, 1982. That brings us to this Court.
14. During the course of this litigation(April 20, 1981) Albert Latendresse
15. through his attorney, Michael S. McIntee together with attorney Robert D.
16. Hartl erroneously and maliciously cashed and converted the judgment bond
17. set up to Stay Execution. Attorney Hartl was trustee of the Money Market
18. certificate set up in Rugby, North Dakota(Credit Union)for this security.
19. The Appellants feel their constitutional rights have been denied
20. and abridged. They feel that their grievances are worthy of litigation
21. and that they are unable to pursue this case to the fullest without
22. the maximum legal expense waivers possible
23. WHEREFOR your Appellants pray the Court for Waiver of all fees, costs
24. and prepayment of security and whatever relief the Court may deem just
25. and proper.

26. Respectfullu submitted this 1st day of September, 1982.

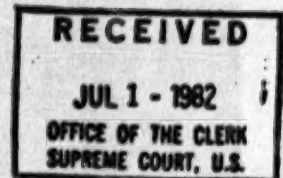
27. 
28. /s/ ORVILLE J. LATENDRESSE
29. For the Appellants, pro se
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State of North Dakota
SUPREME COURT
BISMARCK

CLERK OF THE SUPREME COURT
MRS. LUELLA DUNN

June 28, 1982



The Honorable Alexander Stevas
Clerk, United States
Supreme Court
One First Street, N.E.
Washington, DC 20543

RE: LATENDRESSE v. LATENDRESSE
Our #10,135

Dear Mr. Stevas:

Mr. Latendresse has forwarded to me a Notice of Appeal to the Supreme Court of the United States. The Notice of Appeal is enclosed. You will note Mr. Latendresse is not appealing a final judgment or order of the North Dakota Supreme Court.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Luella Dunn".

Luella Dunn, Clerk
Supreme Court

LD:ck
encls.

cc: Mr. Orville Latendresse
Mr. Michael S. McIntee
The Honorable Ralph J. Erickstad

FILED BY CLERK JUN 17 1982
NORTH DAKOTA SUPREME COURT

Box 166, Upham, ND, 58789
June 15, 1982

Luella Dunn, Clerk
North Dakota Supreme Court,
State Capitol Grounds
Bismarck, ND, 58505

Re: Latendresse v. Latendresse et al
File No. 10135

Dear Ms Dunn:

Please find enclosed NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT, and seven copies and the original of MOTION FOR STAY OF PROCEEDINGS AND EXTENSION OF TIME TO FILE BRIEFS on Appeal to the North Dakota Supreme Court and Certificate of Service to Appellee for which I would appreciate your filing.

Motion For Leave to Proceed In Forma Pauperis and instructions for Docketing; the appeal will follow shortly.

Respectfully Yours

Orville J. Latendresse
Orville J. Latendresse
For the Appellants pro se

CERTIFICATE OF SERVICE

I, Orville J. Latendresse, being first duly sworn under oath, do depose and say; that on the 16th day of June, 1982, this affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, a true and correct copy of the afore-mentioned documents filed in the above captioned action; That the copies of the documents were securely enclosed in an envelope with postage duly prepaid, and addressed to: Michael B. McIntee, McIntee Law Firm, P.O. Box 705, 207 South Main Street, Towner, ND, 58788; That to the best of my knowledge and belief, such address was the actual post office address of the party intended to be served; That the above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Orville J. Latendresse
Orville J. Latendresse
For the Appellants pro se

Subscribed and sworn to before me this 16th day of June 1982

K. Kitzman
KEN KITZMAN, Notary Public
Ward County, North Dakota
My Commission Expires April 27, 1985

IN THE SUPREME COURT)
STATE OF NORTH DAKOTA)

Albert Latendresse,
Plaintiff-Appellee

v.

Orville Latendresse aka
Orville J. Latendresse and
Ruth Latendresse,

Defendants-Appellants.

ORDER
File No. 10135

On April 5, 1982, the defendants-appellants, Orville and Ruth Latendresse, filed motions with this Court requesting a further extension of time in which to file a transcript and also requesting leave to proceed in Forma Pauperis pursuant to Section 27-01-07, N.D.C.C.

The deputy clerk of this Court informed Orville Latendresse by letter dated March 10, 1982, that an extension of time to file a transcript had been granted until 4:00 p.m., April 6, 1982. The Latendresse's have failed to provide a reason why additional extension of time for filing the transcript is necessary. Accordingly, this Court HEREBY ORDERS the motion for a further extension of time to file the transcript is denied.

The motion to proceed in Forma Pauperis was accompanied by a sworn affidavit of indigency as required by Section 27-01-07, N.D.C.C. This Court, having considered that request, HEREBY ORDERS that Orville and Ruth Latendresse be

permitted to proceed in Forma Pauperis in the above-titled action exempting them from paying a filing fee but not exempting them from paying costs of transcript, attorney's fees, any other fees or costs, or from providing security therefor.

The Supreme Court of the State of North Dakota convened at 4:00 p.m. this 5th day of April, 1982, with the Chief Justice, the Honorable Ralph J. Erickstad; the Honorable Wm. L. Paulson, the Honorable Paul M. Sand, the Honorable Vernon R. Pederson, the Honorable Gerald W. Vandewalle, Justices; L. David Gunkel, Staff Counsel; and the Deputy Clerk of the Supreme Court, Joanne Eckroth, being present and directed the entry of the above order.


Joanne Eckroth
Deputy Clerk
North Dakota Supreme Court

Rec'd 7-28
W/ent.

IN THE SUPREME COURT
OF THE UNITED STATES

Orville J. Latendresse, et al
Appellants-Defendants

v.

Albert Latendresse
Appellee-Plaintiff

MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

No. A-1126
(ND) 10135

COMES NOW the Appellants, in the above entitled action, and move the Supreme Court of the United States for Leave to Proceed In Forma Pauperis pursuant to Federal Rules of Civil Procedure, rule 75(m), 28 U.S.C.A. ; 28 U.S.C.A. § 1915 and more specifically(a):

"Any court of the United States may authorize the commencement, prosecution or defense, of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security thereof, by a person who makes affidavit that he is unable to pay such costs or to give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress. ..."

The Appellants further lean on ALMINS v. E.I. DuPONT De NEMOURS & Co., Inc., 355 U.S. 331 for the Supreme Court ruling that:

"7. Courts... One need not be absolutely destitute in order to enjoy the benefits of statute providing for appeals in forma pauperis. Federal Rules of Civil Procedure, rule 75(m), 28 U.S.C.A.; 28 U.S.C.A. § 1915...."

"8. Courts.... An affidavit which states that affiant cannot because of his poverty, pay or give security for the costs on appeal and still be able to provide himself and his dependants with the necessities of life is sufficient. Federal Rules of Civil Procedure, rule 75(m), 28 U.S.C.A.; 28 U.S.C.A. § 1915...."

"4. Courts.. 405(14). The court may save the cost of printing by providing for a typewritten record in an appeal in forma pauperis. Federal Rules of Civil Procedure, rule 75(m), 28 U.S.C.A."

An Affidavit in support of this Motion is attached hereto and made a part hereof as if the same were set forth fully herein.

Dated this 7th day of July, 1962 at Uphan, ND, 58709

Orville J. Latendresse
/s/ Orville J. Latendresse
For the Appellants, pro se

IN THE SUPREME COURT
OF THE UNITED STATES

Orville J. Latendresse, et al
Appellants-Defendants
v.
Albert Latendresse
Appellee-Plaintiff

AFFIDAVIT IN SUPPORT OF MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS
No. 4-1126
(MD) No. 10135

We, Orville J. Latendresse and Ruth Latendresse, the above-named Appellants, being first duly sworn, depose and say that we are the Appellants-Defendants in the above entitled action; that in support of our Motion To Proceed on our Appeal without being required to pay fees, costs or give security therefor we state that because of our poverty we are unable to pay the costs of said proceeding or to give security therefor; that we believe that we are entitled to redress; and that we further swear that the responses we have made to the questions and instructions below relating to our ability to pay the costs of prosecuting the appeal are true.

(1) "Are you presently employed?"

No. Orville Latendresse lost one eye in an accident in 1939, and seriously wounded the other one in 1946. He has been on a total and permanent (legally blind) status since and together with serious hearing impairment (even with hearing aid) and has been on social security or veteran's non service connected disability pension since and more recently Medicare. His last army wages were in 1946 at about \$90.00 per month. His present Social Security disability pension for him and his wife is \$307.00 and for their two dependant children \$90.00.

The co-appellant, Ruth, has not been able to work since her automobile collision with a train in 1973 at which time she had been working in a Bottineau, North Dakota Hospital (St. Andrews). She wound up with five bolts in one leg, painful allergic swellings and despite continuous search for medical relief has gained no progress to date. Her employer did not pay in for Social Security so she is not eligible for disability pension. Her wages then were about \$270.00 per month.

(2). "Have you, within the past twelve months, received any income from a business, profession or any form of self employment, or in the form of ~~rent payments~~ rent payments, interest, dividends or other sources?"

A net loss of \$3,385.06 was reported on the Federal Income tax 1040 for 1981 taking into consideration as farming expenses all legal expenditures defending title to the Homestead and personal property from Execution Sale (Thorsen v. Latendresse, MD 9914 (1981))

(3). "Do you own any cash or checking or savings account?"

Cash on hand- \$10.00; no savings accounts; checking account with First National Bank in Bottineau, ND, 58318 (acct. # 07 899 8) is overdrawn most of the month with \$15.00 to \$25.00 monthly overdraft charges.

(4). "Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property/ (Excluding ordinary household furniture and clothing)."

Undivided joint tenancy interest (with adverse party) in Homestead. "Fair Market Value" according to McHenry County 1981 tax receipts for my share would be \$44,060.00 (this "Fair Market Value" of the 200 acres would not reflect the actual informed buyer's offer after considering an undivided interest and its continuous wildlife (ducks, geese and blackbird) depredation from the adjacent Clark Salyer National Wildlife Refuge since the mid 1930's. Present mortgage of record to Midwest Federal S&L Ass. of \$12,833.77 being paid by the Appellants. Crop losses to wildlife depredation have been as much as 93% according to United States Agricultural Stabilization and Conservation Service (USDA ASCS) calculations. When their disaster payments were available (which they aren't any more) it only amounted to about a dollar a bushel (a mere fraction of the present disastrous price for wheat). As a result of the judgment Execution against the above

Appellants in Thorsen v. Latendresse (MD) No. 9914 (1981) they could be denied the crops from the Homestead wherein they claimed Exemption on North Dakota Century Code 28-22-02 and 28-22-04.

Livestock and Farm Equipment(depreciation taken into account on the previous affidavit used in the North Dakota Supreme Court which was last years values).

500 Case diesel tractor— \$500.00; Oliver 38 diesel tractor w/ loader, not useable, needs large tire, clutch and major overhaul—\$400.00; 1972 Ford pickup— inoperable, needs motor—\$35.00; 1954 Chevrolet truck, hasn't been running or licensed for years, motor inoperable—\$50.00; 1968 Versatile, pull type combine(needs sieves , augers and tires— \$400.00, Krause 15' tool bar cultivator(needs shovels) --\$80.00; Kewanee 12' , wheel mounted tandem disc(bent shaft)— \$60.00; $\frac{1}{2}$ interest in sprayer — \$15.00; #863.D power mower—\$60.00; Farmhand wheel rake— \$45.00; Lehman stack frame— \$25.00; 4 section harrow— \$15.00; dump rake — \$5.00; IHC 16' pull/type swather— \$20.00; $\frac{1}{2}$ interest in 12' press drill — \$10.00; wheelless 10' tandem disc— \$5.00; 2- 300 gallon fuel tanks on stand(30 years old)— \$40.00; 4bottom 14" plow, packer, drill and mulcher— \$150.00; Total —\$2378.00

Tools ect.: Battery charger(not full power anymore, missing meter) — \$8.00; socket set — \$30.00; combination wrenches — \$10.00; air compressor(less motor) — \$15.00; handyman jack — \$5.00; wheel puller — \$15.00; cable hoist(broken cable)—\$5.00; manual log splitter — \$5.00; small bit grinder — \$10.00; cigarette lighter air compressor — \$10.00; shop manuals — \$40.00; Miscellaneous light, cords and tools — \$30.00. Total----- \$185.00

Minus indebtedness—

Midwest Federal Savings and Loan Assn. (mortgage due on Homestead paid by the Appellants, only) —\$12,833; Judgement Execution of Thorson v. Latendresse, ND # 9914— \$8,844.89with interest at 6% from Aug. 28th, 1980 and 12 % from July 1, 1981; Farmers Union Oil Co. Rugby, ND, \$2155.18; Upham Farmers Elevator Co., Upham, ND, 58789-\$1968.15
\$200- Curtis Latendresse, Minot, ND, 58701, Dennis Latendresse, \$100.00, Bradley Gosson, Buthville, ND, 58758, medical bills — \$1,000.00, ether— \$300.00 . Total debt plus other unlisted interest

Net equity - \$28,199.80
+\$16,421.20

(5) Persons dependants for support and their relationship are:
sons Brent Carter and Justin Jay, and brother-in-law, Eugene Braaten.

We understand that a false statement or answer to any question in this Affidavit will subject us to penalties for perjury.

Dated this 13th day of July, 1982 at Upham, ND, 58789

Orville S. Latendresse
a
Ruth Latendresse
a

Subscribed and sworn to before me this 19 day of July, 1982

Linda Erickson

LINDA ERICKSON
Notary Public, Renville County, N. Dak.
My Commission Expires May 28, 1984